

UNITED STATES DISTRICT COURT

for the
District of New Mexico

FILED
At Albuquerque NM

MAR 10 2016

MATTHEW J. DYKMAN
CLERK

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Gabriel BENAVIDEZ
Date of Birth: '1990
SSN -2052

Case No.

16-MR-186

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

The person known as Gabriel BENAVIDEZ with Date of Birth. /1990, SSN: -2052

located in the District of New Mexico, there is now concealed (identify the person or describe the property to be seized):

DNA evidence; to wit; Buccal cell swab, sufficient for DNA analysis, which would be material evidence in a criminal prosecution.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☒ a person to be arrested or a person who is unlawfully restrained.

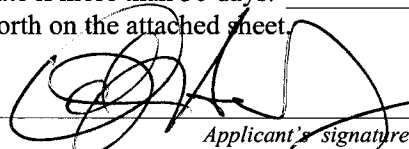
The search is related to a violation of:

Code Section	Offense Description
Title 18 USC 922(g)(1)	Convicted felon in possession of a firearm

The application is based on these facts:

See attached affidavit

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signature

Victor Hernandez, Task Force Officer, ATF

Printed name and title

Sworn to before me and signed in my presence.

Date: 03/10/2016

City and state: Albuquerque, New Mexico


Judge's signature

Kirtan Khalsa U.S. Magistrate Judge
Printed name and title

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1. Victor J. Hernandez, a Task Force Officer with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), being duly sworn, deposes and states:
2. Your Affiant is a full time salaried sworn law enforcement officer with the Albuquerque Police Department, and has been so for 11 years.
3. Approximately one of those years has been spent on the investigation of federal felony crimes. Part of your Affiant's duties for the past one year has included being a Task Force Officer for the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.
4. In this capacity your Affiant routinely investigates violations of federal criminal statutes, to include violation of federal firearms laws, and has specifically investigated violations related to subjects who are found to be in possession of illegal and altered firearms. Your Affiant requests that an Arrest Warrant be issued for the above named defendant based on the following information, which your Affiant believes to be true and accurate.
5. I am an investigative, or law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510 (7), in that I am an officer of the United States who is empowered by law to conduct investigations and make arrests for the offenses enumerated in Titles 18 and 26, United States Code.
6. The statements contained in this affidavit are based, in part, on information provided by Special Agents and Task Force Officers of the ATF and other

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law enforcement officers; on conversations held with police officers; and on my background and experience as a Task Force Officer of the ATF.

7. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.
8. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

PROBABLE CAUSE

9. On March 8, 2016, Albuquerque Police Department Officers were dispatched to the Aztec Village Apartments, Building 12, apartment 368, located at 4321 Montgomery Blvd. NE. The 911 caller (later identified as J.L.) stated that her boyfriend (later identified as Gabriel Benavidez), who was inside the apartment, was threatening her with a knife and that he could not know she was calling the police or he would kill her.
10. Albuquerque Officer A. Henry # 5625, who was the primary dispatched officer, along with other back up officer, attempted to make contact with the occupants inside apartment 368. Officers were able to see a male subject as he closed the blinds to the glass sliding door and other officers heard someone bracing objects against the front door to prevent any type of entry.
11. Officers continued attempts to get someone to come to the door and APD dispatch made a telephone call back to the original caller in hopes of getting some positive response from inside the apartment. After approximately 90 minutes of negotiations with the occupants of apartment 368, they exited

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safely, and the male subject, later identified as Gabriel BENAVIDEZ, was detained for investigation.

12. APD Officer A. Henry, along with other members of the Albuquerque Police Department conducted a safety sweep of the apartment to insure no other person(s) were hiding or concealing themselves where one could.
13. During the sweep, Officer Henry saw on the floor of the master bedroom closet, a long barreled rifle that he described to have a black in color handle and wood type stock. There was also a magazine attached to the rifle.
14. The officers immediately backed out of the apartment after ensuring no other person(s) were inside the residence and requested assistance from the on-call ATF Task Force Officer.
15. ATF Task Force Officer Victor Hernandez responded to the location, where he met and was briefed on APD Officer Henry regarding the events of this incident.
16. ATF/TFO Hernandez met and spoke with the victim in this incident, J.L. During the conversation, J.L. told me that she was in fear for her safety as well as those of her two small children of receiving an immediate assault and/or battery from Daniel BENAVIDEZ.

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17. J.L. told ATF/TFO Hernandez that she had been the victim of a similar incident with BENAVIDEZ and that case is still pending indictment with the 2nd Judicial District Court, State of New Mexico.
18. J.L. told ATF/TFO Hernandez that BENAVIDEZ had arrived at the apartment as she was attempting to gather personal belonging and clothing. J.L. said she had not been staying at the apartment for the last month and BENAVIDEZ had been residing at the apartment alone. J.L. said that when BENAVIDEZ arrived she could tell that he was "high" on Methamphetamine. ATF/TFO Hernandez asked J.L. how she knew this and she told me that BENAVIDEZ is a methamphetamine user and she was familiar with his behavior and actions when he is under the influence.
19. ATF/TFO Hernandez asked J.L. if she had knowledge of any firearms, ammunition or illegal narcotic drugs inside the apartment at this time. J.L. said that she was unaware of any of those things as she had not been staying at the apartment.
20. J.L. was assisted in gathering her personal belongings and the apartment was secured, pending application for a state search warrant to be written by ATF/TFO Victor Hernandez.

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21. ATF/TFO V. Hernandez attempted to interview BENAVIDEZ, as he had now been informed that he was under arrest for being a Felon in Possession of a Firearm.
22. ATF/TFO Hernandez advised BENAVIDEZ of his Constitutional Rights per Miranda. BENAVIDEZ verbally acknowledged that he understood his Constitutional Rights and spoke with me. BENAVIDEZ acknowledged and confirmed that he was a previously convicted felon and that he was prohibited from possessing any firearms and ammunition.
23. BENAVIDEZ told ATF/TFO Hernandez that he had been residing at the apartment for the last month. BENAVIDEZ denied any knowledge of firearms or ammunition within the apartment.
24. ATF/TFO Hernandez applied for and secured a search warrant for 4321 Montgomery Blvd. NE Bldg. 12 Apartment 368. The search warrant was approved by ADA Donald Sears Jr. and Honorable Metropolitan Court Judge V. Chavez.
25. ATF/TFO Hernandez, along with APD Crime Scene Investigator D.R. Hoffman, conducted the search of the apartment. The search was documented with photographs before commencing, during the discovery of evidence and after the search was complete.

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26. ATF/TFO Hernandez recovered the following items of evidence from inside the apartment 368: One (1) SKS assault rifle, unknown make or model as information had been obliterated, 7.62x39 caliber, bearing unknown serial number as information had been obliterated and fourteen (14) rounds of NK brand, 7.62x39 caliber ammunition; three (3) rounds of Wolf brand, 7.62x39 caliber ammunition; seven (7) rounds of Remington brand, 223 caliber ammunition; two (2) rounds of FC brand, 223 caliber ammunition; eight (8) rounds of Remington brand, 45 caliber ammunition; one (1) round of C&C brand, 45 caliber ammunition; four hundred (400) rounds of Freedom Munitions Reman brand, 9mm caliber ammunition; three hundred-thirty two (332) of Freedom Munitions Reman brand; 45 caliber ammunition.
27. Your Affiant determined the Gabriel BENAVIDEZ has been convicted of two (2) previous felony crimes to-wit: Receiving or Transferring a Stolen Motor Vehicle (D-1314-CR-200900250) and Aggravated Assault with a Deadly Weapon (D-1314-CR-200900300) all out the 13th Judicial District Court, County of Valencia, State of New Mexico.
28. Your Affiant determined that Gabriel BENAVIDEZ has a pending case in the 2nd Judicial District Court, County of Bernalillo, State of New Mexico in reference to D-202-CR-201600432.
29. The firearm was test fired by your Affiant, who found that it functioned as designed. Further, your Affiant determined that the firearm and ammunition which were recovered were not manufactured in New Mexico, therefore affecting interstate commerce.

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30. Based on the above facts, your Affiant opines Gabriel BENAVIDEZ, a previously convicted felon, possessed a SKS assault rifle, unknown make or model as information had been obliterated, 7.62x39 caliber, bearing unknown serial number as information had been obliterated and fourteen (14) rounds of NK brand, 7.62x39 caliber ammunition; three (3) rounds of Wolf brand, 7.62x39 caliber ammunition; seven (7) rounds of Remington brand, 223 caliber ammunition; two (2) rounds of FC brand, 223 caliber ammunition; eight (8) rounds of Remington brand, 45 caliber ammunition; one (1) round of C&C brand, 45 caliber ammunition; four hundred (400) rounds of Freedom Munitions Reman brand, 9mm caliber ammunition; three hundred-thirty two (332) of Freedom Munitions Reman brand; 45 caliber ammunition in violation of Title 18 U.S.C. 922(g)(1).
31. Furthermore, your Affiant knows it is common for an individual's DNA to be transferred to items handled by that individual; in this case the items are firearms. Based upon these facts, your Affiant respectfully requests that a search warrant be issued for Gabriel BENAVIDEZ, to collect a sample of buccal cells for forensic analysis and for use as evidence in court as your Affiant opines there is probable cause to suggest Gabriel BENAVIDEZ previously and unlawfully handled the above firearm and ammunition.

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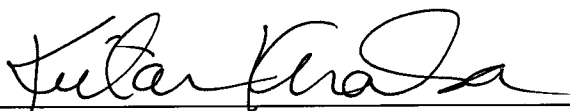
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Victor J. Hernandez", written over a horizontal line.

Victor J. Hernandez
Task Force Officer
ATF

Subscribed and sworn to before me
on March 10, 2016:

A handwritten signature in black ink, written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE